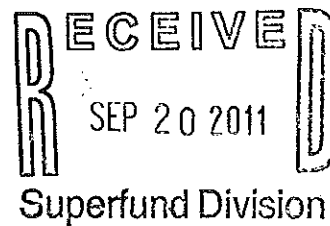


Kennecott Eagle Minerals  
504 Spruce Street  
Ishpeming, MI 49849  
T 906-486-1257  
F 906-486-1053

September 15, 2011



Mr. Richard C. Karl  
Director, Superfund Division  
Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Re: Request for Consent to Access to Kennecott Eagle Land, LLC Property  
Humboldt Mill Site**

Dear Mr. Karl:

This letter responds to your August 12, 2011 correspondence to Lynn Cardey-Yates, Vice President, Legal of Kennecott Utah Copper, LLC. Your correspondence requests that Kennecott Utah Copper consent to EPA entering into the Humboldt Mill site in Marquette, Michigan in order to conduct a site inspection (SI) of the site under the authority of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). To that purpose, your letter enclosed a consent to access form to be signed and returned to EPA by the appropriate Kennecott officer.<sup>1</sup> An executed consent form is enclosed. Note, however, that we have slightly modified the form to reflect federal and Kennecott mine safety requirements, provide for reasonable advance notice of the inspection, and provide for the splitting of any samples taken during the inspection. In addition to these modifications of the consent form, Kennecott calls your attention to the following additional items:

1. Kennecott Eagle Minerals Company (KEMC) is the Kennecott entity that will operate the mill site. Accordingly, future correspondence and other communications concerning the site should be addressed to me as the Environmental and Permitting Manager for KEMC's mine and mill operations in Michigan.
2. Your August 12 request for access addresses two parcels where the mill buildings and associated improvements are located: it does not address the tailings disposal facility adjacent to these parcels that KEMC recently acquired. The enclosed consent to access includes a consent to access the parcels comprising the tailings disposal facility.
3. Kennecott highly values its cooperative relationship with EPA Superfund staff, as evidenced by its collaboration with EPA to address various issues at the Bingham Canyon Mine outside of Salt Lake City, Utah. Indeed, EPA has touted this collaborative effort as a model for addressing mine sites under CERCLA. We therefore want to assure you that KEMC is committed to fully cooperating and assisting EPA in its evaluation of the of the Humboldt Mill site.

However, KEMC has serious concerns about EPA's access request and its decision that a preliminary site inspection is even warranted. These concerns include:

<sup>1</sup> Your letter requested that this form be returned to Nuria Nuniz, the Region 5 NPL Coordinator, within 14 days of Kennecott's receipt of the letter. Ms. Cardey-Yates received the letter on August 15, 2011, establishing an initial deadline for response of August 29, 2011. However, in subsequent telephone conversations and email correspondence between Kennecott's outside environmental counsel Gene Smary and Region 5 Associate Regional Counsel Maria Gonzalez, EPA and Kennecott agreed to extend the deadline for returning the consent form to September 15, 2011.

- a. The site is a brownfield redevelopment site subject to a covenant not to sue ("CNTS") executed between the Michigan Department of Environmental Quality ("MDEQ") and KEMC under Part 201 of the Michigan Natural Resources and Environmental Protection Act. As such, EPA's proceeding with the site assessment process is wholly inconsistent with Addendum I to the Superfund Memorandum of Understanding between MDEQ and EPA Region 5, as well as Sections 105(h) and 128(b) of CERCLA itself. Each of these documents reflect a general CERCLA policy of avoiding federal CERCLA involvement in cases where, as here, the site at issue is already being addressed under state authorities. This particularly true where, as here, a non-labile Bonafide Prospective Purchaser is committing substantial resources to improve the site under a state brownfield redevelopment program.
- b. We understand that the sole reason for EPA initiating a preliminary assessment of the mill site is because the Keweenaw Bay Indian Community ("KBIC") requested that EPA do so in an August 26, 2009 letter from Tribal President Warren C. Swartz, Jr. to then Region 5 Administrator Bharat Mathur. However, KBIC is an ardent opponent of Kennecott's activities in the area, and an active litigant against the Kennecott Eagle Mine. Mr. Swartz's letter is clearly designed to advance that effort: the letter does not document any imminent or substantial endangerment to human health or the environment presented by existing conditions at the mill site or any other special concern that would warrant EPA involvement. To the contrary, the KBIC simply recounts the past history of the site and notes concerns about future planned activities at the site. The letter provides no legitimate basis to conclude that site presents the type of special circumstances that justify EPA involvement under the above-referenced policies and statutory provisions.
- c. The Preliminary Site Assessment for the mill site is based on outdated, incomplete information that ignores the substantial environmental response activities taken to date and planned under the CNTS. Indeed, the CNTS specifically encompasses several of the "source" areas of contamination mentioned in the Assessment. This document also fails to recognize that the site is heavily regulated under several permits issued for Kennecott by the MDEQ. These permits include financial assurance, reclamation, corrective action and other requirements that: (1) minimize the potential for future releases at the site, (2) minimize and/or eliminate the risk of exposure to past releases and (3) further minimize any risks off-site migration of past releases. In other words, this site is an active, permitted, heavily regulated site that simply does not fit the risk profile CERCLA is intended to address.

For all of these reasons, we believe a meeting with EPA to discuss these concerns and to bring EPA up to date on current site conditions before any site visit would be very helpful to both parties. We are willing to do so at EPA's convenience at your offices on October 3<sup>rd</sup> or 7<sup>th</sup>, or early in the week of October 10<sup>th</sup>. We believe that such a meeting may very well eliminate any concerns you have and the need to exercise CERCLA authorities at this site. At the very least, such a meeting would serve to focus EPA's activities at the site and facilitate a more efficient site assessment process. If EPA is not inclined to engage in such a meeting, then we request that EPA at least provide a copy of its proposed Work Plan for the site inspection in advance of the visit, so as to enable KEMC to plan for and address any safety concerns.

In the meantime, please do not hesitate to call or contact me with any questions or concerns.

Sincerely,



Kristen Mariuzza, P.E.  
Environmental and Permitting Manager

C Nuria Muniz  
Maria Gonzales

Kennecott Eagle Minerals  
504 Spruce Street  
Ishpeming, MI 49849  
T 906-486-1257  
F 906-486-1053

September 15, 2001

### CONSENT FOR ACCESS TO PROPERTY

Name: Kennecott Eagle Minerals Company

Address of Property: See Attached Parcel Legal Description(s)

I consent to officers, employees, contractors, and authorized representatives of the United States Environmental Protection Agency ("U.S. EPA") entering and having continued access to the property, at the address identified above. As a precondition to such access, U.S. EPA agrees that its representatives will:

- A. Provide reasonable advance notice of its arrival on the property.
- B. Agree to split any environmental samples taken on or near the property during the site visit with Kennecott Eagle Minerals Company.
- C. Undergo surface hazard training upon arrival on the property in accordance with 30 CFR 48.101. ~~USE OF THIS FORM IS LIMITED TO THE PURPOSES OF THE U.S. EPA ONLY.~~
- D. Comply with all other safety requirements necessary to meet federal Mine Safety and Health Act and Kennecott safety policies.

The access provided will be for the following purposes:

- 1) Inspecting the property, including land, buildings, facilities, containers, waters, pits, equipment and fixtures, and conducting interviews to assess the property, its historical and current operations and any contamination.
- 2) Taking land measurements, measuring water elevations and taking photographs and video tapes.
- 3) Collecting and taking samples, including samples of soil, sediments, surface water, ground water, wastes, hazardous substances, pollutants and contaminants, wells, and containers on the Property; installing, maintaining, and removing monitoring wells.
- 4) Subject to the federal Mine Safety and Health Act and Kennecott's safety requirements, using equipment on the property, including, but not limited to, hand augers, scoops, bailers, cars, drill rigs, GPS, data loggers, cameras, and other equipment and methods to conduct the activities covered by this consent form, including leaving equipment on the property during the period of the investigation;

**CONSENT FOR ACCESS TO PROPERTY**

September 15, 2011

Page Two of Two

- 5) Performing other actions to investigate releases of hazardous substances, pollutants, or contaminants on the property that U.S. EPA may determine to be necessary; and
- 6) Taking any response action to address releases of hazardous substance, pollutant, or contaminants at the property which U.S. EPA determines may pose an imminent and substantial endangerment to the public health or the environment.

I realize that these actions taken by U.S. EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601-9601-9675 (1997).



Kristen Mariuzza  
Environmental and Permitting Manager  
Kennecott Eagle Minerals Company

## EXHIBIT A

Those certain pieces or parcels of land situate and being in the Township of Humboldt, County of Marquette, and State of Michigan, more particularly described as follows:

### Parcel 1

A parcel of land located in Section Eleven (11) and the Southwest Quarter of the Southeast Quarter (SW  $\frac{1}{4}$  of SE  $\frac{1}{4}$ ), and the Southeast Quarter of the Southwest Quarter (SE  $\frac{1}{4}$  of SW  $\frac{1}{4}$ ) of Section Two (2), all of Township 47 North, Range 29 West, in Humboldt Township Marquette County, Michigan, which is North of a line which runs from the West  $\frac{1}{4}$  corner of Section 11 to the center of Section 11. The entire parcel is described as follows:

Beginning at the West quarter (1/4) corner of said Section Eleven; thence North  $0^{\circ}5'13''$  East (along the West section line) 1317.71 feet to a 1/16 corner; thence North  $36^{\circ}54'02''$  East 1654.56 feet, (to the section line between said Section Two and Eleven); thence North  $89^{\circ}41'13''$  East 320.00 feet, to a 1/16 corner; thence North  $0^{\circ}35'15''$  West 230.00 feet, (along 1/16 line); thence North  $55^{\circ}01'35''$  East 334.35 feet; thence North  $79^{\circ}47'54''$  East 1047.15 feet; thence due East 750.00 feet; thence due South 899.93 feet; thence due West 740.54 feet; thence S  $34^{\circ}28'27''$  W 1886.91 feet; thence due South 220.00 feet; thence South  $44^{\circ}35'07''$  East 1172.41 feet; thence South  $78^{\circ}00'37''$  East 495.81 feet; thence South  $49^{\circ}23'09''$  West 249.39 feet; thence South  $11^{\circ}58'32''$  West 283.08 feet; thence North  $78^{\circ}01'27''$  West 169.01 feet; thence South  $11^{\circ}58'32''$  West 15.00 feet; thence North  $78^{\circ}01'27''$  West 81.52 feet; thence North  $11^{\circ}58'32''$  East 15.00 feet; thence North  $78^{\circ}01'27''$  West 1012.31 feet; thence North  $53^{\circ}58'56''$  West 747.64 feet; thence North  $42^{\circ}25'15''$  West 139.23 feet, to the East-West quarter (1/4) line; thence South  $89^{\circ}52'58''$  West 685.07 feet, to the Point of Beginning. Only that part of parcel which is North of the line mentioned above is being conveyed, in accordance with the sketch attached hereto and marked Exhibit A Map, Parcel I.

AND

### Parcel 2

A parcel of land located in the South One-half of the Southeast Quarter (S  $\frac{1}{2}$  of SE  $\frac{1}{4}$ ) and the Southeast Quarter of the Southwest Quarter (SE  $\frac{1}{4}$  of SW  $\frac{1}{4}$ ) of Section 2, Township 47 North, Range 29 West, in Humboldt Township, Marquette County, Michigan, more particularly described as follows:

All that part of the Southeast Quarter of the Southeast Quarter lying North of the South right-of-way of U.S. 41 as presently constructed; the Southwest Quarter of the Southeast Quarter, excepting the South six-hundred (600.00) feet; all that part of the Southeast Quarter of the Southwest Quarter lying North of the following described line: Commencing at the South  $\frac{1}{4}$  corner of said Section Two; thence N  $0^{\circ}51'09''$  W 600.00 feet (along the N-S  $\frac{1}{4}$  line) to the Point of Beginning; thence S  $79^{\circ}47'54''$  W 1047.15 feet; thence S  $55^{\circ}01'35''$  W 334.35 feet (to the West line of said SE-SW, and N  $0^{\circ}35'15''$  W 230.00 feet from the SW corner of same).

**EXHIBIT A**

**Property**

**Parcel I**

Part of Section 11, Town 47 North, Range 29 West, described as follows: Part of the South 1/2 of Section 11 beginning 685.07 feet East of the West 1/4 corner; thence South 42 degrees East 139.23 feet; thence South 53 degrees East 747.64 feet; thence South 78 degrees 1 minute 3 seconds East 1012.31 feet; thence South 11 degrees West 15 feet; thence South 78 degrees East 81.52 feet; thence North 11 degrees East 15 feet; thence South 78 degrees East 169.01 feet; thence North 11 degrees East 283.08 feet; thence North 49 degrees East 249.39 feet; thence North 78 degrees West 495.31 feet; thence North 44 degrees West to North line of the Southwest 1/4; thence West along the North line to the point of beginning.

**Parcel II**

Part of Section 11, Town 47 North, Range 29 West, 4.44 acres more or less, described as follows: Part of the North 1/2 of the South 1/2 beginning at the South 1/4 corner of Section 11; thence East 364.85 feet; thence North 1528.65 feet to the point of beginning; thence North 77 degrees 31 minutes West 1037.84 feet; thence North 11 degrees 53 minutes East 181.04 feet; thence South 78 degrees 06 minutes East 1037.77 feet; thence South 11 degrees 53 minutes West 191.61 feet to the point of beginning.

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The property address and tax parcel number listed below are provided solely for informational purposes, without warranty as to accuracy or completeness. If the information listed below is inconsistent in any way with the legal description listed above, the legal description listed above shall control.

Property Address: Humboldt Township, Michigan

Tax Parcel No.: 52-06-211-001-20 and 52-06-211-003-10